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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

MICROSOFT CORPORATION,

and

ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 23-cv-02880-JSC

**NON-PARTY NINTENDO OF AMERICA
INC. MOTION FOR A PROTECTIVE
ORDER RE DKT. NO. 181 (BENCH
BRIEF REGARDING DEFENDANTS'
PROFFERED TESTIMONY
REGARDING MICROSOFT'S
AGREEMENTS)**

Pursuant to Fed. R. Civ. P. 26(c), Non-Party Nintendo of America Inc. (“NOA”) hereby moves for a protective order regarding its confidential information contained in Plaintiff’s Federal Trade Commission (“FTC”) Bench Brief Regarding Defendants’ Proffered Testimony Regarding Microsoft’s Agreements (“Bench Brief”) (Dkt. No. 181).

I. INTRODUCTION

On June 22, 2023, Plaintiff filed its Bench Brief. (Dkt. No. 181). Plaintiff also filed the required Administrative Motion to Consider Whether Another Party’s Material Should Be Sealed. (Dkt. No. 180). However, at this time, Plaintiff has not provided NOA with the unredacted version of its Bench Brief. On June 27, 2023, counsel for NOA inquired with Plaintiff regarding this matter. Therefore, NOA is unable to ascertain which of Nintendo’s confidential information Plaintiff used that was produced during the course of discovery in *In the Matter of Microsoft Corp. and Activision Blizzard, Inc.*, before the FTC Office of Administrative Law Judges, Docket No. 9412. Therefore, NOA is unable to file its Statement designating its confidential information because it does not know what information of NOA’s Plaintiff has incorporated into its Bench Brief.

II. ARGUMENT

Under Fed. R. Civ. P. 26(c), the court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. A good cause analysis under Rule 26(c) entails a balancing of the needs for discovery against the need for confidentiality. *CBS Interactive, Inc. v. Etilize, Inc.*, 257 F.R.D. 195, 205 (N.D. Cal. 2009). Courts have broad latitude under the law to tailor protective orders to prevent disclosure of materials for many types of information, including, but not limited to, trade secrets or other confidential research, development, or commercial information. *Id.* at 201.

Good cause exists here. Due to Plaintiff’s failure to provide the required notice, NOA objects to the disclosure of any of NOA’s confidential information contained in Plaintiff’s Bench Brief. To date, NOA has dutifully filed its Civil L.R. 79-5 Statements when given the requisite

notice. *See* Dkt. Nos. 168, 219, 220, 221, 238, 239. Alternatively, NOA requests that such information be provisionally sealed until NOA may confer with Plaintiff to obtain the necessary information in order to file its Civil L.R. 79-5 Statement.

III. CONCLUSION

For the foregoing reasons, Non-Party NOA respectfully request the Court to keep sealed the entirety of NOA's confidential information contained in Plaintiff's Bench Brief Regarding Defendants' Proffered Testimony Regarding Microsoft's Agreements (Dkt. No. 181) and for that information to remain redacted on the Court's public docket. Alternatively, NOA requests that such information be provisionally sealed until NOA may confer with Plaintiff to obtain the necessary information in order to file its Civil L.R. 79-5 Statement.

Dated: June 29, 2023

VENABLE LLP

By: /s/ Steven E. Swaney
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